



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/075,823	02/12/2002	Waldemar Debinski	6460-41	8785
7590	01/16/2004			
Stanley A. Kim, Ph.D., Esq. Akerman, Senterfitt & Eidson, P.A. 222 Lakeview Avenue, Suite 400, P.O. Box 3188 West Palm Beach, FL 33402-3188			EXAMINER	HUYNH, PHUONG N
			ART UNIT	PAPER NUMBER
			1644	
DATE MAILED: 01/16/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/075,823	<b>Applicant(s)</b> DEBINSKI ET AL.
	<b>Examiner</b> Phuong Huynh	<b>Art Unit</b> 1644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE One MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is **FINAL**.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-43 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) \_\_\_\_ is/are rejected.
- 7) Claim(s) \_\_\_\_ is/are objected to.
- 8) Claim(s) 1-43 are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. §§ 119 and 120

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All
  - b) Some
  - c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.
- 13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
  - a) The translation of the foreign language provisional application has been received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                              | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)          | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ . | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

- I. The location of your application in the PTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Art Unit 1644, Group 1640, Technology Center 1600.
- II. Claims 1-43 are pending.

***Election/Restrictions***

- III. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  1. Claims 2-8, drawn to a method for detecting a cancer in a brain tissue by analyzing the brain tissue sample for a VEGF-D nucleic acid marker using VEGF-D nucleic acid, or RNA, classified in Class 435, subclass 6.
  2. Claims 9-18, drawn to a method for detecting a cancer in a brain tissue by analyzing the brain tissue sample for a VEGF-D protein marker using a probe that specifically binds to the VEGF-D protein, a probe that is a VEGF-D antibody, classified in Class 435, subclass 7.1.
  3. Claims 19-22, drawn to a method of modulating VEGF-D gene expression in a brain cancer cell using oligonucleotide, antisense oligonucleotide, classified in Class 536, subclass 24.5; Class 514, subclass 44.
  4. Claims 26-28, drawn to a method of identifying a test compound that modulates expression of VEGF-D gene in a brain cancer cell by detecting VEGF-D nucleic acid marker in the cell, classified in Class 435, subclass 6, and 7.23.
  5. Claims 29-32, drawn to a method of identifying a test compound that modulates expression of VEGF-D gene in a brain cancer cell by detecting VEGF-D protein marker in the cell, classified in Class 435, subclass 7.1, and 7.21.

6. Claims 33-43, drawn to a method of inhibiting angiogenesis associated with a brain cancer in a subject by administering a molecule to the central nervous system wherein the molecule is an antibody, classified in Class 424, subclass 130.1.

Linking claim 1 will be examined along with Group 1, claims 2-8 or Group 2, claims 9-18.

Linking claims 23-25 will be examined along with Group 4, claims 26-28 or Group 5, claims 29-32.

The inventions are distinct, each from the other because of the following reasons:

Inventions of Groups 1-6 are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case, the methods as claimed using distinct products such as nucleic acid and antibody differs with respect to their method steps and therapeutic endpoints. Therefore, they are patentably distinct.

- IV. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification and/or recognized divergent subject matter. Further, even though in some cases the classification is shared, a different field of search would be required based upon the structurally distinct products recited in the various methods comprising the distinct method steps. Further, a prior art search also requires a literature search. It is an undue burden for the examiner to search more than one invention. Therefore restriction for examination purposes as indicated is proper.
- V. Applicant is advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed.
- VI. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phuong Huynh "NEON" whose telephone number is (571) 272-0846. The examiner can normally be reached Monday through Friday from 9:00 am to 5:30 p.m. A message may be left on the examiner's voice mail service. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Chan can be reached on (571) 272-0841.

Any inquiry of a general nature or relating to the status of this application should be directed to the Technology Center 1600 receptionist whose telephone number is (703) 308-0196.

- VII. Papers related to this application may be submitted to Technology Center 1600 by facsimile transmission. Papers should be faxed to Technology Center 1600 via the PTO Fax Center located in Crystal Mall 1. The faxing of such papers must conform to the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The CM1 Fax Center telephone number is (703) 872-9306.

Phuong N. Huynh, Ph.D.  
Patent Examiner  
Technology Center 1600  
January 12, 2004

*Christina Chan*  
CHRISTINA CHAN  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600